

Amendment No. 1 to SB2377

Bowling
Signature of Sponsor

AMEND Senate Bill No. 2377

House Bill No. 1679*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 20, is amended by adding the following language as a new section:

(a) Notwithstanding § 20-12-119(c)(5)(A), if a claim is filed with a Tennessee or federal court, the Tennessee claims commission, board of claims, or any other judicial body established by the state or by a governmental entity of the state, against an employee of the state or of a governmental entity of the state in the person's individual capacity, and the claim arises from actions or omissions of the employee acting in an official capacity or under color of law, and that employee prevails in the proceeding as provided in this section, then the court or other judicial body on motion shall award reasonable attorneys' fees and costs incurred by the employee in defending the claim filed against the employee.

(b) For purposes of this section, the employee shall be the prevailing party if:

(1) The employee successfully defends the claim alleging individual liability; or

(2) The claim of individual liability is dismissed with or without prejudice after forty-five (45) days have elapsed after an answer or other responsive pleading is filed in which the employee asserts the employee was not acting within the employee's individual capacity at the time of the matters stated in the complaint.

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(c) The inclusion of an additional claim against the employee in official capacity in the same proceeding shall not preclude the employee from obtaining the remedies provided in this section that are related to the claim against the employee in individual capacity.

(d) Attorneys' fees and costs shall be paid to the state, or a governmental entity of the state, if either the state or the governmental entity represents, or retains and agrees to pay for counsel to represent, the employee sued in an individual capacity. If the state has not made such agreement, the attorneys' fees and costs shall be paid to the employee, or to counsel representing the employee. Attorneys' fees shall be calculated at a reasonable rate paid to attorneys of similar experience in private practice in the county where the proceeding is initiated.

SECTION 2. This act shall take effect June 1, 2016, the public welfare requiring it, and is applicable to claims filed on or after that date.